



The Attorney General of Texas

January 20, 1981

MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Honorable A. C. Gonzalez
City Manager
City of San Marcos
P. O. Box 725
San Marcos, Texas 78666

Open Record Decision No. 263

Re: Whether financial disclosure
statements filed by city officials
are available to the public

Dear Mr. Gonzalez:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether financial disclosure statements filed by city officials are available to the public.

In April 1980 the city of San Marcos adopted an ordinance which requires certain city officials to file financial disclosure statements. The ordinance, while giving to "[a]ny citizen of San Marcos" the "right to examine any disclosure statement," provides that "no copies shall be made of any part of any statement, and no publication shall be allowed." In order to examine a file, an individual must execute "a sworn statement that gives reasonable details of why he or she believes a certain employee or officer has a conflict of interest." The ordinance also requires that certain city officials be present during the examination of any file. The city of San Marcos recently received a request for copies of all financial statements filed pursuant to the disclosure ordinance. You contend that the information is excepted by the terms of the ordinance and by sections 3(a)(9) and 3(a)(10) of the Open Records Act.

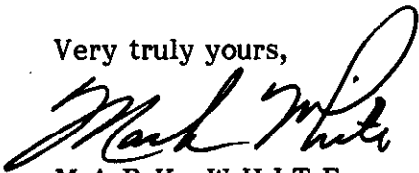
In Attorney General Opinion H-1070 (1977), this office addressed a general inquiry regarding the validity of various provisions in a proposed financial disclosure ordinance for home rule cities. One question was whether "the city . . . could exempt from public inspection the entire financial statement of city employees." The opinion said that information in the financial disclosure statement:

would . . . be subject to the Open Records Act. Such information might, of course, be excepted from disclosure in individual cases under one or more of the provisions of section 3 of that Act. We believe, however, that any attempt to make the information contained in the proposed financial disclosure statements per se exempt from public disclosure would run afoul of the Open Records Act and be of no effect.

As an example of specific information which might be withheld, the opinion suggested that a "list of customers required of an attorney or physician might be confidential by law in some cases," under section 3(a)(1) or 3(a)(2). You have not in the present instance submitted individual disclosure statements, or suggested that any of them might be specifically withheld under a particular exception of the Open Records Act in accordance with the standard imposed in Attorney General Opinion H-1070.

We note additionally that the city ordinance at issue here, while not entirely exempting financial statements from public inspection, imposes somewhat onerous conditions upon their disclosure, and does so on the basis of the requestor's reasons for seeking inspection. The act itself prohibits a custodian from making any inquiry into the motives of the requestor. V.T.C.S. art. 6252-17a, §5(b). It is therefore our conclusion that the city of San Marcos must make available to the public, in accordance with the Open Records Act, copies of all financial disclosure statements required by law to be filed, excepting only those portions of any particular statement excepted from disclosure by a specific provision of the act. The applicability of any such exception should be determined on a case-by-case basis. Attorney General Opinion H-1070 (1977).

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Acting Chairman
Jon Bible
Rick Gilpin
Bruce Youngblood